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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **ANDRE TOLIVER,**

Petitioner,

15 **v.**

16 **A. J. MALFI, Warden,**

Respondent.

C 07-2744 WHA (PR)

19 **ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS**
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Respondent.

C 07-2744 WHA (PR)

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

19 Respondent hereby provides this answer to the order to show cause why the petition for
20 writ of habeas corpus should not be granted:

21 **CUSTODY**

22 Petitioner is lawfully in the custody of A. J. Malfi, Warden of California State Prison at
23 Represa, California, as a result of a judgment of conviction in Alameda County Superior Court in
24 Case No. 140843. After he was convicted of six counts of robbery, and firearm and prior conviction
25 allegations were found true, petitioner was sentenced to serve 45 years and four months in state
26 prison.

GENERAL AND SPECIFIC DENIALS

Respondent denies the state court's ruling was based on an unreasonable determination of fact or was contrary to or involved an unreasonable application of clearly established United States Supreme Court law. Respondent specifically denies that (1) officers' demand for petitioner's clothing at the jail violated his right to an attorney; (2) trial and appellate counsel were ineffective for not raising the clothing issue; (3) the evidence was insufficient to support the gun-use enhancements; (4) petitioner's right to represent himself was violated; (5) petitioner's due process rights were violated by the trial court's refusal to suppress a line-up identification; (6) trial counsel was ineffective for not moving to sever the counts; and (7) trial counsel was ineffective for not moving to strike petitioner's second Three Strikes conviction.

PROCEDURAL DEFENSES

Petitioner has exhausted his claims in state court, and his federal petition appears timely.

LODGED DOCUMENTS

Respondent has lodged concurrently with this Answer the following exhibits: (1) state court Clerk's Transcript (2 Vols.); (2) state court Reporter's Transcript (3 Vols.); (3) opinion by the California Court of Appeal; (4) California Supreme Court denials of Petitions for Writ of Habeas Corpus; (5) respondent's brief.

Respondent hereby incorporates by reference the accompanying Memorandum of Points and Authorities in support of this Answer.

CONCLUSION

WHEREFORE, respondent respectfully submits that the Petition for Writ of Habeas Corpus should be denied.

Dated: August 22, 2007

Respectfully submitted,

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